

MINUTES OF THE REGULAR MEETING OF DECEMBER 10, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 10, 1998, at 7:30 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to adopt the agenda as presented.

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to approve the minutes of November 19, 1998 as amended.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

C/U #1263--application of JAY AND JUDY BESTPITCH to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling use (2 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.5054 acres, more or less, south of Pine Road within Angola Neck Acres Subdivision, 120 feet northeast of Road 279 approximately 2,400 feet southeast of Road 279A, lot 14, Angola Neck Acres.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the area west of the West Rehoboth Expansion Area where the County Council agreed to restrict zoning changes and conditional uses.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Evesboro loamy sand which has slight limitations; that the applicants shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the farmland rating of the soil type is considered of Statewide Importance.

The Commission found that comments from DelDOT were not requested since the site is located on a private street.

The Commission found that Jay Wayne Bestpitch was present and stated in his presentation and in response to questions raised by the Commission that they propose to remodel the loft over the garage into a one-bedroom apartment for seasonal rental; that a drainage ditch is piped across the lot between the dwelling and the garage; that the lot next door is proposed to be used for a rental manufactured home; that the streets are not

maintained by an Association; that the loft has electricity, but no heat or other utilities; that the existing septic is adequate to serve both the dwelling and the apartment; that the majority of the lots in the subdivision are improved; that the majority of the owners of the lots in the subdivision are seasonal occupants; that the garage was built two years ago; and that the access to the loft is from the rear of the garage.

The Commission found that no parties appeared in support of or in opposition to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the stipulation that the site plan be reviewed and approved by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

C/U #1264--application of LOUIS LEE VICKERS, JR. AND LORI LEIGH VICKERS to consider the Conditional Use of land in an AR-1 Agricultural Residential District for retail stone business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 3.11 acres, more or less, of a 15.81 acre tract, lying northwest of Road 26 and 1,000 feet southwest of U.S. Route 113.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "B" of Road 26 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Osier loamy sand and Pocomoke sandy loam which have severe limitations; that the applicants shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the farmland rating of the Osier soil is considered of Statewide Importance and a Hydric soil; and that the farmland rating of the Pocomoke soil is considered Prime Farmland (where drained), of Statewide Importance (where not drained), and Hydric soil.

The Commission found that Louis Lee Vickers, Jr. and Steve Parsons, Attorney, were present and stated in their presentations and in response to questions raised by the Commission that Mr. Vickers lives on the site; that the business has existed on the site for approximately 30 years; that the business includes retail sales of stone, gravel, and

landscaping materials; that all materials are trucked in from off site; that there should be no adverse impact on traffic or property values; that Mr. Vickers purchased the business from his father in 1988; that all equipment is parked inside of buildings on the site; that business hours are from 6:00 a.m. to 5:00 p.m. weekdays, from 8:00 a.m. to noon on Saturdays, with no Sunday hours; that the business is operated by Mr. and Mrs. Vickers and one full-time employee; that they also deliver and spread the stone or gravel; that they receive deliveries daily; that they average 10 to 15 customers per day at the site; that signage exist; that security lighting exist; and that no building expansions are proposed.

The Commission found that no parties appeared in support of or in opposition to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the purpose of the application is to bring the use into conformity, and with the following stipulations:

1. Business hours shall be from 6:00 a.m. to 5:00 p.m. weekdays, 8:00 a.m. to noon Saturdays, and with no Sunday hours.
2. Future signage shall be no larger than the existing sign.
3. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/Z #1360--application of BILLY C. JONES, JR. to consider a proposal to amend the comprehensive zoning map from a GR General Residential District to an AR-1 Agricultural Residential District in Little Creek Hundred, located west of Road 510, 1,050 feet south of Road 503, to be located on 1.23 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements due to the wet soil type which has a seasonally high water table from November to April; that the soils are mapped as Fallsington sandy loam which has severe limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the soil type is considered Prime Farmland, of Statewide Importance, and a Hydric soil.

The Commission found that Billy C. Jones, Jr. and Billy C. Jones, Sr. were present and that Billy C. Jones, Jr. stated in his presentation and in response to questions raised by the Commission that he request that the site be downzoned to agricultural zoning so that he may apply for a Conditional Use for auto repair with the understanding that the number of vehicles stored on the site may be limited to a certain number; and that he has continued to operate the business since being violated.

The Commission found, based on a letter received from Wayne Elliott, that he and his father will not oppose the application; that they would like to request that conditions be imposed on the site, if a Conditional Use is approved, that provide for no commercial signage; tree screening; a limitation on the number of vehicles parked outside of the garage, referencing 6 vehicles, and that they would prefer tree plantings, rather than fencing, for screening.

The Commission found that Arthur Egolf, a neighbor, has no objection to the use intended.

The Commission found that no parties appeared in opposition to this application.

At the conclusion of the public hearings, the Chairman referred back to this application.

Motion made by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a downzoning.

C/Z #1361--application of GULFSTREAM DEVELOPMENT to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential-Residential Planned Community District in Baltimore Hundred, located at the northwest intersection of Road 361 and 368 and east of Road 362, to be located on 64.28 acres, more or less.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is contiguous to the Bethany Beach Sanitary Sewer District and is located in the South Coastal Planning Area; that existing sanitary sewer lines have been designed with adequate capacity to address development; that an extension of a regional sewer line will be required with some oversizing to accommodate up-gradient development areas; that the proximity of the site to the existing South Coastal Regional Wastewater Facility raises some concerns regarding its compatibility with the treatment plant; that it is requested that the inclusion of a buffer strip, equivalent to that required adjacent to agricultural operations, be placed along Road 368 as a condition of approval; that the project should be served through the extension of the Bethany Beach Sanitary Sewer District; that the current impact fee for the District is \$2,159.00 per

equivalent dwelling unit; and that all work required to extend sanitary sewer service to the project will be at the developers expense and in accordance with Ordinance No. 38 procedures.

The Commission found, based on comments received from the Sussex Conservation District, that it may be necessary for some on-site and off-site drainage improvements due to the wet soils which have seasonally high water tables from November to April, and since there will be more impervious areas causing more runoff; that the McCabe Tax Ditch may be affected; that the soils are Hydric; that Wetlands may be present; that the soils are mapped as Evesboro loamy sand, Fallsington sandy loam, and Pocomoke sandy loam; that the Evesboro soils have slight limitations; that the Fallsington and Pocomoke soils have severe limitations; that the applicants shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance and a Hydric soil in small depressions; that the Fallsington soils are considered Prime Farmland, of Statewide Importance, and a Hydric soil; and that the Pocomoke soils are considered Prime Farmland (where drained), of Statewide Importance (where not drained), and a Hydric soil.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service "A" of Road 362 and the level of service "B" of Road 368 may change to level of service "C".

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objection to the rezoning of the parcel, but offers the following comments: that the soils are hydric and have the potential to contain some freshwater wetlands; that the Wetlands and Subaqueous Lands Section of DNREC has concerns about the practicability of the project; that DNREC would like to see a wetlands protection plan before the site is considered for approval; that the Delaware Emergency Management Agency noted that this area does have the potential for significant flooding during a Category 3 hurricane with estimated surge heights of 14 feet; that since there are no evacuation routes adjacent to the site, it would be critical for property owners to evacuate early during hurricane events; that the Delaware State Housing Authority supports the intent to include multi-family dwellings units as multi-family housing can be the most economical housing to construct, and it is needed to meet the affordable housing needs of low and moderate income families; that it would be beneficial if some of the units were set aside for low-income housing as the coastal area has a high proportion of the County's service and retail jobs, but a smaller proportion of the County's affordable housing supply.

The Commission found that eight (8) letters were received in support of the application.

The Commission found that one (1) letter was received in opposition which referenced opposition to the project, especially the storage buildings; the lose of privacy; depreciation of property values; detracton from the quality of life; and that if the use is approved, a 20' wide 6' high berm should be placed adjacent to the property line with 6' high trees to provide screening.

The Commission found that Robert Harris of Gulfstream Development, James Fuqua, Attorney, and Jeff Clark of Land Tech, Inc. were present and stated in their presentations and in response to questions raised by the Commission that the project was reviewed by the State Development Advisory Service on October 1, 1998, with no reported negative comments; that the site contains approximately 64 acres with access from three (3) roads; that the site is across from the South Coastal Treatment Facility; that they propose to develop the site with 59 single family lots, 103 single family homes in clusters, and 40 apartment units; that the density proposed is 3.1 units per acre; that recreational areas are proposed with pool, tennis courts, and a clubhouse; that the proposed storage area contains 1.75 acres; that the residents of the project will have first option to rent the storage units; that chain-link type fencing will not be installed around the storage area; that a 10' buffer is proposed along the Henneman property; that as many trees, as possible, will be saved; that low lighting will be provided around the storage area; that the storage buildings will be architecturally compatible with the homes being constructed in the project; that capacity is available in the Bethany Beach Sanitary Sewer District; that the need for a 30' buffer along Road 368 is questioned since a 40' setback is required; that central water can be provided by the Public Water Supply company; that no environmental impacts are anticipated; that a 0.25 acre area contains upland wetlands; that all ditch crossing will comply with the requirements of the Corps. of Engineers; that stormwater management will meet or exceed the requirements of the Sussex Conservation District; that recreational uses are available in close proximity at the beaches, state parks, and golf courses in the area; that shopping is available in close proximity; that medical facilities are available in close proximity; that traffic impacts will be minimal; that the residential area will have access from Road 362 and Road 368; that the storage area will have access from Road 361; that a homeowners association will be established to maintain the amenities and infrastructure; that housing proposed in growth areas (Development Districts) is supported by the Comprehensive Plan, not in agricultural areas; that mixed housing is supported by the Comprehensive Plan; that the site is in close proximity to surrounding subdivisions and planned communities; that historically, the site has been tilled; that 11 acres of woodlands exist on the site; that agricultural ditching exist on the site; that the site is not located in a Flood Zone; that paved roads and sidewalks will be constructed throughout the project; that 44 homesites will have pond frontage; that 40 homesites will be wooded; that seven wet ponds are proposed for stormwater management; that stormwater discharge will have the same rates as the existing site; that the site is located in the Millville Volunteer Fire Company service area; that the tax ditch will be preserved with minimal street crossings; that

minimal disturbance of woodlands is proposed; that Phase One shall contain 51 units, Phase Two shall contain 63 units, Phase Three shall contain 63 units, Phase Four shall contain the 40 apartments, and Phase Five shall contain the storage units; that some lots lines are proposed to encroach into the ponds; that fees will be allocated for maintenance of the ponds; that water levels should be maintained; that the homes will look a lot like the homes in Clearwater, another project developed by Mr. Harris; that a majority of the homes will be for year-round occupancy; that the homes will be priced in the \$150,000 range; that square footage of the homes will vary from 1,100 to 2,200 square feet; that the recreational amenities will be constructed prior to selling 100 units; that the areas around the ponds will be planted and controlled by a no-mow area to restrict waterfowl from walking up into the lots; that the ponds may be no more than six feet in depth; that buyers can be made aware that some percentage of their lots may be underwater because of the pond designs; that DelDOT has discouraged the interconnection of the access to the storage area to the housing area to limit the amount of traffic onto Road 361; that the storage units will be constructed with similar siding as the homes with pitched and shingled roofs, and with units in size from 10' by 10' to 15' by 20'.

The Commission found that Mr. Fuqua submitted a tax map highlighted with the developments in close proximity; a copy of the Development Advisory Service Report of October 1, 1998; and copies of sections of the Comprehensive Plan.

The Commission found that no parties appeared in support of the application.

The Commission found that Randall Foskey, Hayward Daisey, Joyce Daisey, and Keith Cooke were present in opposition to the application expressing concerns to loss of the quiet area, loss of wildlife habitat, concerns about the location of some of the amenity areas and the storage units, and depreciation of property values; and requesting that if the project is approved that adequate buffers be provided to separate the project from their homes; and suggesting that the buffers include 20' wide 6' high berms planted with 6' high black pines to provide security, sound proofing, and visual screening.

The Commission found that Sara Coulson, a Commissioner in the Town of Ocean View, was present, not opposed, but with concerns about the comments received from the Office of State Planning Coordination and the intent of the storage units.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The rear lot lines of the subdivision lots shall be along the pond frontage.
2. All subdivision lots shall contain a minimum of 7,500 square feet of lot area, exclusive of pond area.
3. Recreational amenities shall be relocated near the intersection of Road 361 and Road 368.
4. The storage area shall be buffered with a 20' wide 6' high berm planted with 6' tall black pines spaced per the recommendation and approval of the State Forester.
5. The number of units shall not exceed 202 units.
6. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

III. OLD BUSINESS

C/U #1261--application of FRANK E. APPEL AND DICK APPEL to consider the Conditional Use of land in an AR-1 Agricultural Residential District for boat storage and boat motor repair to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.64 acres, more or less, lying east of Road 626, 2,460 feet south of Route 36.

The Commission discussed the points and issues raised during the public hearing on October 8, 1998.

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
2. Security lighting, if installed, shall be directed away from neighboring properties and Road 626.
3. The maximum number of boats to be parked outside shall be twenty (20). The area for outside parking of boats shall be fenced to screen the boats from neighbors.
4. This approval is for the dry storage of boats and boat repair only, and shall not include auto repair or painting.
5. One (1) unlighted sign, not exceed 32 square feet per side or facing, may be permitted.

C/Z #1355--application of CONSOLIDATED LAND TRUST, L.L.C. to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential - Residential Planned Community District in Baltimore Hundred, located east of Road 361, across from Road 362, to be located on a parcel containing 40.62 acres, more or less.

Mr. Lynch abstained from participating in the discussion since he had not listened to the tape of the public hearing.

The Commission discussed the points and issues raised during the public hearing on October 22, 1998.

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried with 4 votes to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The number of units shall not exceed 88 single family detached dwelling units.
2. The site plan shall be incorporated into the record as the preliminary.
3. The final site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

C/Z #1357--application of KENNETH WOODRING to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a HR-RPC High Density Residential District - Residential Planned Community in Baltimore Hundred, located north side of Road 382 (also known as State Road 20), 1,500 feet west of Route 54, to be located on a parcel containing 31.18 acres, more or less.

The Commission discussed the points and issues raised during the public hearing on November 12, 1998.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. A thirty- (30) foot setback shall be maintained from Mill Creek Acres.
2. Age limitations on the project shall conform to Delaware State Law and shall be subject to review and approval by the Sussex County Attorney.
3. Units within the project shall not be rented.
4. The number of units shall not exceed 135 units.
5. A fifty- (50) foot setback shall be provided from the Cobb property.
6. A thirty- (30) foot wide landscaped buffer shall be provided along the Cobb property.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

C/Z #1358--application of TAGGART FAMILY TRUST to amend the comprehensive zoning map from a MR Medium Density Residential District to a B-1 Neighborhood Business District in Baltimore Hundred, located east of Route One and 300 feet north of Road 361A and adjacent to south boundary line of Bethany Beach, to be located on a parcel containing 1.16 acres, more or less.

The Commission discussed the points and issues raised during the public hearing on November 12, 1998.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried 4 votes to 1, to forward this application to the Sussex County Council with the recommendation that it be approved since it is the intent of the applicant to develop the site with a medical professional building, and since building improvements and dumpsters are proposed to be placed on the south side of the property.

C/Z #1359--application of BRYCE M. LINGO AND T. WILLIAM LINGO to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community in Lewes and Rehoboth Hundred, located northeast of Hebron Road, 1,800 feet northeast of Route One and west of the Lewes and Rehoboth Canal, to be located on a parcel containing 62.60 acres, more or less.

Mr. Schrader was not present during this discussion.

The Commission discussed the points and issues raised during the public hearing on November 19, 1998. Mr. Wheatley stated that he listened to the tape, read the minutes and reviewed the file; that he compared this application to other planned community applications and finds that this application conforms to the Ordinance, but may not conform to the concept of a planned community. Mr. Phillips stated that there might be too many units; questioned if access would be adequate; and stated that there may be too much traffic into Church Street. Mr. Hastings stated that he listened to the tape, read the minutes, and reviewed the file; that he is concerned about the density at this location; and that he questions if the intent of a planned community is being met in this plan. Mr. Allen stated that the intent of the Residential Planned Community concept was to cluster housing and provide more open space, and suggested that 150 to 155 clustered units may be more acceptable, so that more open space can be provided. Mr. Wheatley added that if the number of units is reduced, the applicants should be given some flexibility toward the location of the clustering.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The number of units shall not exceed 155 units.
2. The site plan shall be returned to the Planning and Zoning Commission for review as a preliminary. The developers shall attempt to cluster the units to provide open space.
3. The final site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

Subdivision #98-9--application of GARY WATSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 41.86 acres into thirty-seven (37) lots, located north of Road 465, approximately 2,318 feet west of Road 479.

The Chairman discussed the points and issues raised during the public hearing on November 19, 1998 meeting.

Mr. Abbott advised the Commission that the staff has received a septic feasibility statement from DNREC; that twenty-five percent of the lots are suitable for gravity fed septic systems; that sixty-two and one half percent of the lots are suitable for low pressure pipe or elevated sand mound systems; that twelve and one half percent of the lots are not suitable for septic; that the department recommends that the developer install a community septic system; and that the department stated that the plan is feasible under there current regulations.

It was the consensus of the Commission that the final plan should depict and reference the poultry houses that are to be removed, so that future lot owners will be aware that there was once a poultry operation on the property.

It was the consensus of the Commission that the staff contacts DNREC and obtains a clarification in reference to the septic feasibility statement.

Mr. Hastings stated that he listened to the tape, read the minutes, and reviewed the file.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried four votes to none, with Mr. Wheatley abstaining, to defer action.

IV. OTHER BUSINESS

Robert M. Davis
C/U #1253 Site Plan
Route 17

The Commission reviewed a conceptual site plan for C/U #1253 for mini storage; boat and trailer and recreational vehicle storage off of Route 17.

Mr. Abbott advised the Commission that the site plan references what the developer proposes to do; and that a revised site plan will be required to be submitted referencing all required information to be shown as required by the Zoning Code.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried four votes to none, with Mr. Wheatley abstaining, to approve the site plan as a concept.

Patrick J. Hurley
2 Parcels and 50' Right of Way
Road 68

The Commission reviewed a concept to create two parcels with access from Ross Lane, a private road off of Road 68.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve the request as a concept.

Meeting adjourned at 11:10 P.M.